

Application Serial No. 10/501,064

OT-4995

REMARKS

Applicant respectfully requests reconsideration of this application in view of the foregoing amendments and the following remarks. Claims 1-4, 9-11, 14, and 15 were pending in the application and were rejected in the Office Action. By way of this Amendment, Applicant has: (a) amended claims 1, 9, and 10; and (b) canceled 14 and 15, without prejudice or disclaimer. Therefore, claims 1-4 and 9-11 are currently pending.

2. Rejection of Claims 1-4, 9-11, 14, and 15 under 35 U.S.C. § 102

The Examiner rejected claims 1-4, 9-11, 14, and 15 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,384,721 ("Paielli"). Preliminarily, this rejection is now moot with respect to claims 14 and 15, which have been canceled herein without prejudice or disclaimer due to their incorporation into claims 1 and 9, respectively. Accordingly and for at least the following reasons, Applicant respectfully traverses this rejection with respect to claims 1-4 and 9-11.

As amended herein, claim 1 (*i.e.*, the claim from which claims 2-4 depend) recites a method of monitoring the functionability of a brake lining. This method includes, among other possible steps (*italic emphasis added*):

measuring a value that characterizes the dielectric constant of the lining, wherein the lining is provided between a first, pressing braking member and a second, pressed braking member;
comparing the measured value with a reference value for the lining;
and
determining the functionability when the measured value is within a specific tolerance range,
wherein, when the brake is actuated, the lining contacts the first, pressing braking member and the second, pressed braking member,
wherein the lining includes a braking surface,
wherein at least one conductor is arranged in the lining, and
wherein the at least one conductor is substantially arranged in a plane, which plane is substantially parallel to the braking surface of the brake lining.

Similarly, claim 9, as amended, recites a brake that includes, among other possible things (*italic emphasis added*):

a first, pressing braking member;
a second, pressed braking member
a brake lining provided between the first and second braking members, the brake lining comprising a brake lining material; and
a brake lining monitoring device which is constructed so that it can determine the functionability of the brake lining on the basis of a change in the dielectric constant of the brake lining material,
wherein, when the brake is actuated, the lining is configured to contact the first, pressing braking member and the second, pressed braking member, wherein the lining includes a braking surface,

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wherein at least one conductor is arranged in the lining, and
*wherein the at least one conductor is substantially arranged in a plane,
which plane is substantially parallel to the braking surface of the brake lining.*

Finally, as amended herein, claim 10 similarly recites a brake that includes, among other possible things (italic emphasis added):

a brake lining comprising:
a lining; and
at least two conductors arranged in the lining in a way so that
the conductors can be used to perform a capacitance
measurement; and
a brake lining monitoring device which is constructed so that it can
determine the functionability of the brake lining on the basis of
a change in the dielectric constant of the brake lining,
wherein the lining is configured to be provided between a first,
pressing braking member and a second, pressed braking member,
wherein the lining includes a braking surface, and
*wherein the conductors are substantially arranged in a plane, which
plane is substantially parallel to the braking surface of the lining.*

As hereafter explained, Paielli fails to teach or suggest at least the above-italicized limitations of the method recited in claim 1, the brake recited in claim 9, and the brake recited in claim 10.

Claims 1, 9, and 10 recite that the "the conductors are substantially arranged in a plane, which plane is substantially parallel to the braking surface of the lining." This language is similar to language that was previously recited in claims 10, 14, and 15. In rejecting claims 10, 14, and 15, the Examiner states that Paielli teaches conductors "arranged in a plane that is substantially parallel to the braking surface of the lining (the conductor 24 and 26 are 'plates' and thus are substantially parallel to the braking surface)." Applicant respectfully disagrees. The planes defined by the plate-like conductors 24 and 26 are directly perpendicular to the plane of the braking surface, as explained in, e.g., claim 1 of Paielli and as shown in Fig. 4.

In light of the foregoing, Paielli fails to teach or suggest at least the above-italicized limitations of claims 1, 9, and 10. Accordingly, Paielli can not be used to reject claims 1, 9, and 10, or any claim dependent thereon, under 35 U.S.C. § 102(e). Moreover, as claims 2-4 depend from claim 1 and as claim 11 depends from claim 10, each of these dependent claims is also allowable over Paielli, without regard to the other patentable limitations recited therein. Therefore, a withdrawal of the rejection of claims 1-4 and 9-11 under 35 U.S.C. § 102(e) for anticipation by Paielli is both warranted and earnestly solicited.

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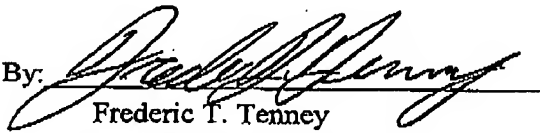
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CONCLUSION

In light of the foregoing, claims 1-4 and 9-11 are in condition for allowance. If the Examiner believes that a telephone conference will be useful to move this case forward toward issue, Applicant's representative will be happy to discuss any issues regarding this application and can be contacted at the telephone number indicated below.

Respectfully submitted,

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